

DECISION MEMORANDUM

**TO: COMMISSIONER KJELLANDER
COMMISSIONER REDFORD
COMMISSIONER SMITH
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL**

**FROM: KRISTINE SASSER
DEPUTY ATTORNEY GENERAL**

DATE: JUNE 20, 2014

**SUBJECT: IDAHO POWER'S APPLICATION FOR APPROVAL OR REJECTION
OF A PPA WITH CLARK CANYON HYDRO, CASE NO. IPC-E-14-15**

On June 4, 2014, Idaho Power Company filed an Application requesting that the Commission accept or reject an Agreement between Idaho Power and Clark Canyon Hydro, LLC (Clark Canyon), for the sale and purchase of electric energy generated by the Clark Canyon hydroelectric Project. Idaho Power asks that its Application be processed by Modified Procedure.

BACKGROUND

On May 20, 2011, this Commission approved an agreement between Idaho Power and Clark Canyon for a 4.7 megawatt (MW) hydro project at a facility located near Dillon, Montana. Order No. 32294. The agreement contained a scheduled operation date of March 31, 2013. Idaho Power states that, for various reasons, the project was unable to meet the March 2013 scheduled operation date. Idaho Power agreed to extend the operation date until December 31, 2013, based on Clark Canyon's agreement to forfeit the posted delay security as liquidated damages. Idaho Power required that the project post an additional security amount as delay security associated with the revised, December 2013, scheduled operation date. The extension agreement was approved by the Commission on May 24, 2013. Order No. 32814. The project subsequently failed to meet its revised, December 2013, operation date.

Ultimately, Idaho Power and the project entered into a Memorandum of Understanding (MOU) that addressed termination of the previously approved agreement and execution of a new seasonal hydro QF agreement. The MOU provides for:

- Termination of the previously approved agreement;
- Collection of delay liquidated damages;

- Negotiation and execution of a new seasonal hydro agreement that retains the delay liquidated damages provision, requires the Project to post delay security for the new agreement at \$45 per kilowatt of nameplate, and allows the Project to offset this delay security by the previously forfeited delay security;
- Any energy deliveries to Idaho Power in the months of March or April will be paid the market value of energy and not the SAR published avoided cost rate;
- If the Project fails to meet the seasonal hydro requirements (i.e. 55% of generation delivered during the months of June, July and August), payments will be revised to reflect non-seasonal hydro SAR published avoided cost rates; and
- The provision in the approved/terminating contract with regard to ownership of renewable energy credits is retained for the new agreement (Idaho Power owns 50% and Clark Canyon owns 50%).

Idaho Power states that, “in negotiating these terms and conditions with Clark Canyon, Idaho Power adhered to its PURPA obligation to contract with this new proposed QF project, addressed the project’s previous lack of performance, satisfied the project’s requests to contract and purchase in a timely and reasonable manner, and maintained the value from the terminated [Agreement] for Idaho Power and its customers by requiring terms and conditions that would carry certain provisions from the terminated [Agreement] forward into the new [Agreement].” Application at 4.

THE APPLICATION

On May 30, 2014, Idaho Power and Clark Canyon entered into a new Agreement pursuant to the terms and conditions of various Commission Orders applicable to PURPA agreements for seasonal hydro projects. Idaho Power states that Clark Canyon now proposes to operate and maintain a 7.55 megawatt (MW) seasonal hydro energy facility located near Dillon, Montana. The Company maintains that the project will be a qualified facility (QF) under the applicable provisions of the Public Utility Regulatory Policies Act (PURPA).

Under the terms of the Agreement, Clark Canyon elected to contract with Idaho Power for a 20-year term using the non-levelized seasonal hydro published avoided cost rates as currently established by the Commission in Order No. 32817 for energy deliveries of less than 10 average MW (aMW). As defined in paragraphs 1.23 and 4.1.4 of the Agreement, Clark Canyon will be required to provide data on the facility that Idaho Power will use to confirm that under normal and/or average conditions, the facility will not exceed 10 aMW on a monthly basis. As

described in paragraph 7.5 of the Agreement, should the facility exceed 10 aMW on a monthly basis, Idaho Power will accept the inadvertent energy that does not exceed the maximum capacity amount, but will not purchase or pay for inadvertent energy.

In its new Agreement, Clark Canyon has selected June 1, 2017, as the project's Scheduled Operation Date. Various requirements have been placed upon the project in order for Idaho Power to accept energy deliveries from this facility. Idaho Power will monitor compliance with these requirements. Idaho Power will continue to monitor the ongoing requirements throughout the term of the Agreement.

The Agreement provides that all applicable interconnection charges and monthly operational or maintenance charges under Schedule 72 will be assessed to Clark Canyon. A Schedule 72 Generator Interconnection Agreement (GIA) between Clark Canyon and Idaho Power was executed on August 10, 2011, for a 4.7 MW facility. Idaho Power maintains that the Company has constructed the required interconnection facilities pursuant to the executed GIA. With the increase in nameplate capacity from 4.7 MW to 7.55 MW, Idaho Power states that Clark Canyon has been advised that it will need to submit an additional interconnection request to accommodate the additional 2.85 MW, and execute a GIA increasing the interconnection capacity to 7.55 MW.

Idaho Power states that PURPA QF generation must be designated as a network resource (DNR) to serve Idaho Power's retail load on its system. In order for the facility to maintain its DNR status and maintain compliance with Idaho Power's non-discriminatory administration of its Open Access Transmission Tariff (OATT) and FERC requirements there must be a power purchase agreement (PPA) associated with its transmission service request.

Idaho Power further explains that the recent hydro agreements are the first hydro-based agreements submitted for approval "that contain revised terms and conditions subsequent to the Commission's final and reconsideration orders from Case No. GNR-E-11-03. As such, the form of the [Agreement] has several terms and conditions that vary from previously approved agreements in order to comply with the Commission's recent orders." Application at 4. Idaho Power and Clark Canyon also agreed to changes in some standard provisions that the parties now propose for Commission approval. In addition to the specifically negotiated provisions pursuant to the MOU, Idaho Power identifies that major changes as follows:

- Change to the definition of "Mid-Columbia Market Energy Cost" to replace reference to the Dow Jones index with reference to the

Intercontinental Exchange (ICE) index and formula consistent with the proposed settlement in Case No. IPC-E-13-25¹;

- Addition of definitions and provisions, paragraphs 1.29, 1.41, 1.42, 3.4 and 7.6 to incorporate definitions of “non-seasonal hydro facility” and “seasonal hydro facility” as well as “seasonal hydro facility test periods” to incorporate and maintain separate rates for seasonal and non-seasonal hydro projects and to ensure that seasonal hydro projects perform within the requirements of generating 55 percent of their annual generation in the months of June, July and August;
- Change to paragraph 6.2 to allow Clark Canyon to adjust the “Initial Year Monthly Net Energy Amounts” on a monthly, rather than quarterly, basis;
- Revision to paragraph 12.4 relating to Scheduled Maintenance; and
- Several other minor revisions in an attempt to add clarity.

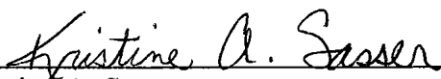
Finally, Article 21 of the Agreement provides that the PPA will not become effective until the Commission has approved all terms and conditions and declared that all payments Idaho Power makes to Clark Canyon for purchases of energy will be allowed as prudently incurred expenses for ratemaking purposes.

STAFF RECOMMENDATION

Staff recommends that the case be processed by Modified Procedure with a comment deadline of August 5, 2014, and a reply deadline of August 12, 2014.

COMMISSION DECISION

Does the Commission wish to process this case under Modified Procedure with a comment deadline of August 5, 2014, and a reply deadline of August 12, 2014?



Kristine A. Sasser
Deputy Attorney General

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¹ This change is relevant to the 90/110 performance requirement. The settlement was approved by the Commission on June 10, 2014. Order No. 33053.